

89-249

Supreme Court, U.S.

FILED

AUG 1 1989

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

ELAINE KENNA,
DEFENDANT-APPELLANT,

v.

STATE OF NEW JERSEY,
PLAINTIFF-RESPONDENT.

ON APPEAL FROM
THE SUPERIOR COURT OF
NEW JERSEY APPELLATE DIVISION
JURISDICTIONAL STATEMENT

Elaine Kenna
33-06 92nd Street
Jackson Heights, NY 11372
(718) 458-9406



JURISDICTIONAL STATEMENT

A. QUESTIONS PRESENTED BY THE APPEAL

1. Where no evidence of any kind is offered upon trial to prove a charge of simple assault which forms the basis of a complaint, shall a conviction survive or be subject to reversal as being in conflict with defendant's rights under the Fourteenth Amendment to the Constitution of the United States of America?

Appellant was charged with attempt to cause bodily injury to PO Douglas Brown by punching him in the chest, in violation of N.J.S. 2c:12-1(a) (1). There was no mention of any assault upon Police Officer Brown by anyone at the trial. The findings of the trial court judge (Appendix A-7) was that there was no clear punching out at Officer Brown, but there was thrashing about, flail our arms. There was no testimony at the trial that the appellant was thrashing about or flailing her arms; the question never arose.

Upon trial de novo (Appendix A-4), there was no mention in regard to any assault upon Officer Brown, yet the Superior Court of New Jersey, Law Division affirmed the conviction of the trial court.

The judgment of the Superior Court of New Jersey, Appellate Division (Appendix A-1), affirmed the judgment of the Law Division (Appendix A-3) which found the defendant guilty of the assault and preventing a lawful arrest.

2. Where the only evidence the State presented to support its charge of resisting arrest is the bald conclusion of the arresting officer that the appellant resisted arrest (Appendix A-1), shall a conviction survive or be subject to reversal as being in conflict with defendant's rights under the Fourteenth Amendment to the Constitution of the United States of America?

On 15 February, 1989, the Superior Court of New Jersey, Appellate Division, affirmed the conviction of the appellant substantially for the reasons stated by the Superior Court, Law Division in its oral opinion issued upon trial de novo, June 22, 1988. The Law Division limited its review solely to questions in regard to credibility, and considered only the issue in regard to

resisting arrest. Review in regard to the conviction of simple assault could not be had, as there was no mention of any alleged assault in the trial court. Nevertheless, the petitioner stands convicted of that charge. The only testimony in regard to the resisting of Officer Brown's arrest is stated in the judgment of the Superior Court of New Jersey, Appellate Division. (Appendix A-1) At that, the last five lines of Footnote 3 on page 5 leave out a part of the testimony of Officer Brown, which needs to be restored to its position between the last two sentences:

Q So did you announce to the defendant that she was being arrested?

A Yes. I told her she was under arrest.

Q And your handcuffs were discharged from your (indiscernible)?

A At that time I (indiscernible).

Q (Indiscernible) resisting from the point that you announced that the —that she was under arrest was the resistance—

3. Where adjudicated facts subject to judicial notice and brought to the attention of the Superior Court of New Jersey, Appellate Division, are excluded and/or determined to be without merit, shall a conviction survive or be subject to reversal as being a violation of appellant's rights under the Fourteenth Amendment to the Constitution of the United States of America.

Paragraph (3) of Rule 9 of N.J.S.A. 2A:84A-16, adopted by the Supreme Court of New Jersey effective September 11, 1967 states:

"Judicial notice shall be taken of each matter specified in paragraph (2) of this rule if a party requests it and (a) furnishes the judge sufficient information to enable him properly to comply with the request and (b) has given each adverse party notice thereof in the pleadings or at least 20 days before the trial. The judge, however, may permit such notice to be given at any time in the interest of justice. In the absence of an adequate basis for taking judicial notice of the law of any jurisdiction other than this State, and the United States, the judge shall apply the law of this State."

Said paragraph (2) of this rule states, in part, that:

"Judicial notice may be taken, without request by a party, of (b) records of the court in which the action is pending and of any other court of this State or federal court sitting in or for this state."

These provisions appear to require the Superior Court of New Jersey, Appellate Division, to take notice of the issues that have been brought before the United States District Court for the District of New Jersey (Appendix A-8), as well as to notice the appeal of that decision to the United States Court of Appeals for the Third Circuit (Appendix A-5). There is mention of every major proceeding in the judgment of the Superior Court of New Jersey, Appellate Division, other than those that took place at the Federal level, even though reference is made to the Federal proceedings in the briefs of both parties. The appellant's petition for removal contains the constitutional issues brought before the court, lacking opportunity elsewhere, and is properly before the court as held in Chicago, R.I. & P. Ry. Co. v. Brazzell, 124 P.40, Leavenworth, Northern & Southern Ry. Co. v. Herley et al., 45 Kan. 535, 539, 26 P.23; Shumaker et al. v. O'Brien, 19 Kan. 476. Said Rule 9 (Appendix A-14), appears to be in conflict with Federal Rules of Evidence, Article II, Rule 201 (d) (Appendix A-13) in the respect that the Superior Court of New Jersey, Appellate Division, has listed petitioner's 13 Points and argument of counsel at the trial de novo, (Appendix A-1) which includes argument on adjudicative facts of the case not subject to dispute; yet, that Court concludes they are without merit and do not require extended discussion.

4. Where the State court has been noticed by way of petition as to the violation of Defendant-Appellant's right to a speedy trial guaranteed under the Sixth Amendment to the Constitution of the United States of America, shall a conviction be allowed to stand based on testimony that has taken place at a time in which defendant was engaged in seeking to enforce her right to a speedy trial in the Federal court system?

The petition states that this prosecution was commenced on September 1, 1986, brought to trial on March 20, 1987, appealed April 7, 1987, reversed on May 28, 1987 and remanded to

the Municipal Court for a new trial. Moreover, also a part of the petition (Appendix A-10), is the statement that the petition was filed within thirty days of the date the petitioner was notified that the State was proceeding with a new trial, which notification was dated August 31, 1987, the last day on which non-indictable charges could have been brought against the officers. Petitioner brought the argument in regard to the violation of her right to a speedy trial before the United States District Court, lacking opportunity in the Municipal Court of the City of Newark, as well as argument in regard to the violation of her rights under the Fourth, Fifth and Sixth Amendments to the Constitution of the United States of America.

5. Shall the record be permitted to stand corrected by the Superior Court of New Jersey, Appellate Division, so as to erroneously show not only that the Defendant-Appellant paid \$210 in fines and penalties, but also to show that Officer Schillizzie's charges be resolved to be a charge of preventing him from perfecting a legal arrest?

The Defendant-Appellant was brought under the jurisdiction of the state court system of New Jersey by virtue of a complaint of simple assault and two complaints, each containing the name of a different officer, but both of which charge the defendant with "purposely prevent a law enforcement officer from effecting a lawful arrest." The vague nature of the complaints is attested to by the exchange in Newark Municipal Court which took place after the state had already prosecuted the complaints through one trial:

THE COURT: What's the State got?

MR. FORD: There are two resisting arrest charges your Honor.

THE COURT: Who are the complaints?

MR. OLIVERAS: The resisting arrest by Officer (indiscernible) and also resisting arrest by Officer Brown. I think in view of —of the history of facts shown, that it is one incident, as alleged by the State. And as alleged by the State's witness.

THE COURT: Let me get this straight, now. Two officers, each charged resisting arrest?

At the conclusion of the trial the judge found that the charge made by Officer Schillizzie charging Elaine Kenna with resisting arrest was not the proper charge - the thrust of the actions should be contained in New Jersey Statute 2c:29-1 and/or 3. It's rather, obstructing with the administration of law and/or hindering apprehension. As to Officer Brown, what he observed of the reactions relating to what Officer Schillizzie was doing and the fact that Elaine Kenna was upon him and the matter that he — she was, was certainly the probable cause to make the arrest, without regard to a need to charge anything else, even though it didn't result in a proper charge.

Clearly, this does not describe probable cause to arrest as being in actions between the defendant and Officer Brown. The Superior Court, Appellate Division, originated the term perfecting an arrest which was not mentioned in the courts below. Evidence suggests that Officer Schillizzie's arrest was not legal and the probable cause for the arrest of the Defendant-Appellant lied in that illegal arrest.

In United States v. Cohen Grocery Co., 264 F.218, 220(1920), the Court ruled that a criminal statute which is so vague that it leaves the standard of guilt to the variant views of the different courts and juries does not measure up to constitutional standards. Specifically regarding the complaint, United States v. Cruikshank, 92 US 542, 544, 558 (1876) and United States v. Simmons, 96 US 360 (1878) have held it to be a constitutional right to have the complaint appraise the defendant with reasonable certainty, the crime charged so he may make his defense.

6. Whether the record of this prosecution is a record of the deprivation of the Defendant-Appellant's right under the Sixth Amendment to the Constitution of the United States of America to be confronted by her accusers.

The defendant-appellant was arrested by a police officer and brought to a police station in which other officers were present and the arresting officer was not. The charges were left up to the commanders of the Port Authority Police, and they did not ask Officer Schillizzie about witnesses who had been present at the first trial, in regard to their availability for the second trial, at which they did not appear. Officer Brown did not appear at one of

the pre-trial hearings, and the Prosecutor either did not have the resources and/or the manpower to appear in the United States District Court for the District of New Jersey. An attorney for the Port Authority of NY & NJ took his place.

7. Shall a conviction be allowed to stand where the Superior Court of New Jersey, Appellate Division, having been notified in regard to defendant's being compromised by omissions in the transcript, finds the transcript in the Newark Municipal Court to contain a substantial number of "indiscernible" omissions, some in significant places, yet, after careful review of the record, concludes that the argument in regard to omissions is without merit?

Immediately before the Municipal Court judge expressed his findings, the transcript reads as follows:

THE COURT: Defense rests?

MR. OLIVERAS: Yes.

THE COURT: Any rebuttal? You rest? Okay.
Will there be statements, gentlemen?

MR. OLIVERAS: Yes, your Honor.

THE COURT: All right. How long will they be?

MR. OLIVERAS: Very briefly. Your Honor —

THE COURT: Mr. Oliveras, what I'm going to do
is I'm going to take a brief recess for a minute or two
(END OF TAPE 87 11 17 c-1.)

(BEGINNING OF TAPE 87 11 17 c-2.)

THE COURT: —flair our arms (Appendix A-7)

CONCLUSION

Defendant-Appellant, Elaine Kenna, respectfully requests the court to review the questions presented by the appeal.

Respectfully submitted,

Saturday, July 29, 1989

Elaine Kenna
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2 COPIES OF OPINIONS, ORDERS, FINDINGS OF FACT, AND
CONCLUSIONS OF LAW DELIVERED UPON THE RENDER-
ING OF THE JUDGMENT BY THE COURT WHOSE DECISION IS SOUGHT TO BE REVIEWED. THE SUPERIOR
COURT OF NEW JERSEY, APPELLATE DIVISION

The Superior Court of New Jersey, Appellate Division, has affirmed the judgment of the Superior Court, Law Division, upon review, and has filed its findings with the clerk of that court on February 15, 1989, a copy of which is included in the Appendix.

3 COPIES OF OPINIONS, ORDERS, FINDINGS OF FACT, AND
CONCLUSIONS OF LAW BY COURTS OTHER THAN THE
COURT WHOSE DECISION IS SOUGHT TO BE
REVIEWED

Superior Court of New Jersey, Law Division

Ordered and adjudged that judgment of the Municipal Court of the City of Newark, rendered at the second trial ended November 17, 1987, was affirmed by judgment filed with the clerk of the court on June 22, 1988, upon trial de novo of that same date. A copy of both the judgment and the opinion of that court is included in the Appendix.

Municipal Court of the City of Newark

A copy of the judgment and the findings of the Court after the second trial held on November 16, and November 17, 1987 are included in the Appendix.

United States Court of Appeals for the Third Circuit

A copy of the order, entered March 29, 1988, denying an appeal from the judgment of the United States District Court for the District of New Jersey to the United States Court of Appeals For The Third Circuit is included in the Appendix.

United States District Court for the District of New Jersey

The order and findings of the Court are included in the Appendix in regard to the denial of a Petition to remove the case to that jurisdiction, as entered by the clerk of the court on November 16, 1987.

Superior Court of New Jersey, Law Division

The letter of May 28, 1987 by which this court determined it could not hear the appeal from the judgment of the first trial, de novo on the record, and remanded the case to the Municipal Court of the City of Newark from which the appeal was taken, is included in the appendix.

Municipal Court of the City of Newark

The judgment of this court and its findings after the first trial that took place on March 20, 1987 is included in the Appendix.

4 STATEMENT OF THE GROUNDS FOR INVOKING
 JURISDICTION OF THE
 SUPREME COURT OF THE UNITED STATES

On 15 February 1989, the Superior Court of New Jersey, Appellate Division, affirmed the judgment of the Superior Court of New Jersey, Law Division, for the reasons stated in the Law Division's oral opinion of 22 June 1988. Appendix A-1. The Supreme Court of New Jersey denied a petition for certification of judgment of the Superior Court of New Jersey, Appellate Division, by its order of 2 May 1989, filed 4 May 1989.

Appendix A-1 The jurisdiction of this Court is invoked under Title 28, United States Code Section 2254, as well as under the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America.

5 STATEMENT OF CONSTITUTIONAL PROVISIONS
 AND STATUTES

The Constitutional provisions and statutes are included in the Appendix.

STATEMENT OF THE CASE

On 2 May 1989, the Supreme Court of the State of New Jersey denied certification to review the conviction of the Defendant-Appellant for violation of N.J.S. 2C:29-2, purposely preventing a law enforcement officer from effecting a lawful arrest and a conviction of simple assault upon that officer in violation of N.J.S. 2C:12-1(a)(1).

Case involves an incident in which the defendant-appellant was arrested on September 1, 1986, as is described in the Petition for Removal (Appendix A-14) wherein the State of New Jersey brought the matter to trial on March 20, 1987, which ended in a mistrial. The defendant-appellant tried to find out the reason for the delay in bringing the matter to a second trial and was told that the State could not locate the complaint. By way of the Petition for Removal, the defendant-appellant brought the matter before the District Court of the State of New Jersey, where it was decided that there was no jurisdiction for removal. Defendant-appellant was notified in regard to the second trial by process dated August 31, 1987, the last day on which non-indictable charges could have been brought against the officers who brought complaints.

The second trial contained no testimony of any kind in regard to an assault which was one of the charges brought against the defendant-appellant. Uncorroborated and conflicting testimony of the arresting officer charging the defendant-appellant with "purposely prevent a law enforcement officer from effecting a legal arrest" in which significant portions of the testimony are unintelligible formed the basis for a conviction of that statute.

7 REASONS QUESTIONS PRESENTED REQUIRE ARGUMENT

Defendant-Appellant has been found guilty of an offense with no testimony to indicate she committed such an offense. This is a matter of public concern. It requires inquiry into the area of judicial notice as well as preserving issues on the record by Federal jurisdiction, lacking opportunity under State jurisdiction.

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-15-88T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ELAINE KENNA,
Defendant-Appellant.

ORIGINAL FILED
FEB 15 1989
Emillie R. Cox, Esq.
Acting Clerk

Submitted January 31, 1989 - Decided FEB 15 1989

Before Judges Pressler and Stern.

On appeal from Superior Court of New
Jersey, Law Division, Essex County.

Elaine Kenna, pro se, for appellant.

Herbert H. Tate, Jr., Essex County
Prosecutor, attorney for respondent
(William D. Ware, agent to the prosecutor,
of counsel and on the brief).

PER CURIAM.

After being permitted to withdraw a guilty plea to one of the offenses, defendant was found guilty on two complaints charging her with preventing Port Authority police officers from making a lawful arrest, N.J.S.A. 2c: 29-2, and simple assault upon one of those officers, Douglas Brown, N.J.S.A. 2c:12-1(a)(1). Defendant was convicted on all three charges, and fines, costs

and penalties for the benefit of the Violent Crimes Compensation Board were imposed. On appeal to the Law Division, the matter was remanded because of an unintelligible record, see R. 3:23-8(a). 1 On remand defendant was found guilty of the assault on Officer Brown and of preventing him from perfecting a lawful arrest. She was acquitted of the second charge under N.J.S.A. 2c: 29-2 relating to preventing another officer from perfecting a lawful arrest.

The assault was merged into the other conviction, and a total of \$300 in fines, costs and penalties were imposed. Defendant was credited for a larger amount previously imposed, as the judge vacated the prior sentences imposed on the merged assault and the charge for which defendant was ultimately acquitted. On appeal to the Law Division defendant was again found guilty of violating N.J.S.A. 2c:29-2, and fines, costs and penalties totaling \$210.00 were imposed.

On this appeal defendant argues 2

- POINT 1 THE REVIEWING COURT ERRED IN STATING THAT THERE IS SUFFICIENT TESTIMONY FROM OFFICER BROWN.
- POINT 2 THE REVIEWING COURT ERRED IN STATING THAT OFFICER BROWN STATED THERE'S NO QUESTION THAT SHE UNDERSTOOD SHE WAS UNDER ARREST.
- POINT 3 THE REVIEWING COURT ERRED IN BASING ITS FINDING OF CREDIBILITY ON THE FACT THAT IT IS NOT INCONCEIVABLE THAT THE RESISTING OCCURRED AS OFFICER BROWN SAID.

- 1 we have not been furnished with the record of the first trial, but have obtained this information from the record of the subsequent proceedings and information contained on the disposition portion of the complaints supplied in defendant's appendix.
- 2 we bypass consideration of the procedural defects in defendant's brief since defendant represents herself pro se on this appeal.

- POINT 4 THE REVIEWING COURT ERRED IN SIMPLY STATING THAT OFFICER SCHILLIZZIE SAID HE SAW THE DEFENDANT ON TOP OF HIM; WHEREAS THE ENTIRE RECORD JUST AS CLEARLY SHOWS THAT THE DEFENDANT WAS NOT ON TOP OF OFFICER SCHILLIZZIE.
- POINT 5 THE REVIEWING COURT ERRED IN ITS FINDING THAT FLAILING AROUND CONSTITUTES RESISTING ARREST.
- POINT 6 THE PROSECUTOR PREJUDICED THE RIGHTS OF THE DEFENDANT BY MAKING THE ERRONEOUS STATEMENT THAT OFFICER BROWN SAW THE DEFENDANT PULLING OFFICER SCHILLIZZIE'S HAIR.
- POINT 7 THE PROSECUTOR PREJUDICED THE RIGHTS OF THE DEFENDANT BY STATING THAT THERE WERE NO PRIOR DEALINGS WITH REGARD TO THE OFFICERS AND THE DEFENDANT WHEN THERE IS NO BASIS IN THE TRANSCRIP TO SUPPORT SUCH A REMARK.
- POINT 8 THE TRIAL COURT ERRED IN ITS FINDING THAT THE ACTS ALLEGED TO HAVE BEEN COMMITTED WERE THRASHING ABOUT, AS THERE IS NO TESTIMONY THAT THE DEFENDANT WAS THRASHING ABOUT.
- POINT 9 THE TRIAL COURT ERRED IN ITS FINDING THAT TOUCHING AND PERMISSIVE ILLEGAL CONTACT MEET THE REQUIREMENTS FOR A CONVICTION UNDER NEW JERSEY STATUTE 2c:29.
- POINT 10 DEFENDANT'S CASE WAS COMPROMISED BY OMISSIONS IN THE TRANSCRIPT.

POINT 11 DEFENDANT MUST HAVE THE OPPORTUNITY TO FACE HER ACCUSERS.

POINT 12 PROOF THAT DOUGLAS BROWN WAS IDENTIFIED TO THE COURT AS A POLICE OFFICER WAS NOT HAD.

POINT 13 THE VERDICT MUST BE TRUE TO THE CHARGES.

On the trial de novo, defendant's argument was summarized by counsel

first, that Brown's testimony should not be credited, because it conflicts with the testimony of others, and he was not at the scene long enough to understand who was who and what was going on. In fact, to distinguish between (defendant) and her other sister who was in close proximity, also with blonde hair, who said that Officer Brown pulled her away from the crowd immediately before he placed (defendant) under arrest, and second, that on the question of intent, the State simply didn't elicit testimony from Officer Brown or from anyone else to show that Miss Kenna had the requisite intent trying to evade Officer Brown. The other Officer who testified, Officer (Schillizzie), he said he did not see what happened at the time that Officer Brown attempted to place Miss Kenna under arrest.

Our careful review of the record leads us to conclude that these arguments are without merit and do not require extended discussion. R. 2:11-3(e) (2). We add only that our scope of review is quite different from that of the Law Division, which must decide the case de novo, see *State v. Johnson*, 42 N.J. 146, 160-163 (1964). In this case, the Law Division judge clearly recognized her responsibility under *Johnson* to make a de novo determination as to guilt or innocence. The Law Division Judge reached independent conclusions, essentially based on resolution of a credibility dispute, and although she could do so only by giving deference to the relevant views of the municipal court judge who initially tried the case, see *id.* at 161, she nevertheless pointed to specific factors and testimony, independent of what the prosecutor suggested was contained in the record, to support her conclusions. 3

Finally, while we note that the transcript of the proceedings in the Newark Municipal Court contain a substantial number of "indiscernable" omissions, some in significant places, we are nevertheless satisfied that the essence of the testimony is clear and was sufficient to support the conviction. Based on our scope of review, we also find sufficient evidence to affirm.

Accordingly, the judgment is affirmed substantially for the reasons stated by Judge Frances M. Cocchia in her oral opinion of June 22, 1988.

I hereby certify that the foregoing is a true copy of the original on file in my office.

Acting Clerk

3 Despite the testimony of Officer Schillizzie, defendant was acquitted of preventing a lawful arrest of Michael Gallagher because the municipal court judge found that the wrong charges were brought on this complaint. See N.J.S.A. 2c:29-3. Schillizzie's testimony was basically directed to defendant's striking and choking him, and Schillizzie made few relevant observations of defendant with respect to Brown. We do not believe that Judge Cocchia's reference to defendant being on top of Schillizzie is controlling except, perhaps, as to the defendant's resulting in Brown's decision to arrest her. In any event, Officer Brown testified that "I told (defendant) she was under arrest. And (indiscernable) to handcuff her (indiscernable). And I (indiscernable) continued to struggle and (indiscernable) to resist (indiscernable). Yes, she continued to resist my efforts to put the handcuffs on."

SUPREME COURT OF NEW JERSEY
C-955 September Term 1988

30,151

STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

ON PETITION FOR CERTIFICATION

ELAINE KENNA,

Defendant-Petitioner.

FILED

May 4, 1989

Steven w. Townsend
Clerk

To the Appellate Division, Superior Court,

A petition for certification of the judgment in A-15-88T1 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice,
at Trenton, this 2nd day of May, 1989.

I hereby certify that the foregoing
is a true copy of the original on file
in my office

steven w. townsend
clerk of the supreme court
of new jersey

STEVEN W. TOWNSEND

CLERK OF THE SUPREME COURT

SUPERIOR COURT OF N.J.
ESSEX COUNTY - LAW DIVISION
MUNICIPAL APPEALS

MA 208-87 A
STATE OF NEW JERSEY
V. ON APPEAL FROM CONVICTION
FROM NEWARK.
ELAINE KENNA FOR VIOLATION OF 2C: 29-2

JUDGMENT

The above stated appeal having been filed on November 20, 1987 and set down for trial on June 22, 1988 before Judge Hon. Francis M. Cocchia

THE MATTER HAVING BEEN TRIED AND FINDING
OF Guilty HAVING BEEN RENDERED:

It is therefore, on June 22, 1988

ORDERED AND JUDGED THAT judgement is affirmed

in addition to the sum of \$8.50 for costs heretofore paid to
the County Clerk (in the event of a "guilty" verdict or
dismissal of the appeal)

Judge Hon. Frances Cocchia

Entered by: John T. Lyons, Jr.
Notice sent to Municipal Court and
Municipal Court Judge on June 22, 1988

Superior Court Law Division MA 208-87 June 22, 1988

THE COURT: All right.

The Judge who sat below had an opportunity to observe the witnesses, to assess their credibility and make his findings, which he did.

It is a question of whether Officer Brown was telling the truth, or Miss Kenna, because it is in conflict. We wouldn't be here if there was no conflict.

Officer Scalizy did, Ms. Alito, say he saw her on top of him. There was testimony to that. I just happened to open to the correct page. Page 20. He did say that he saw her.

Officer Brown stated there's no question that she understood she was under arrest. Even from her version, because she said he told me - I told him to take me. She put out her arms.

The officer stated that he told her she was under arrest, and she should have known, even from her own testimony that he was a police officer, because she said she submitted. He said no, she didn't, that she was resisting, but the judge found she was flailing around, to quote the judge below. Those were his findings of fact.

In this Court's opinion, it's a question of credibility, and there is sufficient testimony from Officer Brown.

In addition, as to credibility, the Court must give due deference to the Judge below who observed the witnesses, and certainly it's not inconceivable that this occurred as Officer Brown said.

It is a question of fact as to whether or not Officer Brown told her he was a police officer, told her that she was under arrest.

As to her intent, you said she didn't have the requisite intent. What was her state of mind? From her own testimony there's no question she knew she was under arrest. The only difference is, the only question is did she resist.

The fact he was a police officer she knows. The fact that he said she was under arrest, she knew, because she said she submitted. The only difference is Officer Brown said that she did not submit as she stated that she did, and the Judge found that she was flailing around, to quote the Court.

I find that she is guilty of resisting arrest.

I think she paid the fine, didn't she?

MS. ALITO: Yes.

MS. KRONE: Thank you, Judge.

MS. ALITO: Thank you, your Honor.

THE COURT: You're welcome.

(Whereupon the proceedings are concluded.)

March 10, 1988

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

C.A. No. 87-5891

STATE OF NEW JERSEY

FILED

vs.

Mar 30, 1988

KENNA, ELAINE

At 8:30 M

(N.J. Civ. No. 87-299-01)

William T. Walsh
Clerk

Present: SLOVITER, MANSMANN and SCIRICA, CIRCUIT
JUDGES

Submitted are:

(1) By the Clerk for possible summary
affirmance pursuant to Internal Operating
Procedure No. 17;

(2) Appellant's response; and

(3) Appellee's response
in the above-captioned case.

Respectfully,

SALLY MVROS/MW

Clerk

SMMW

enc.

The foregoing motion for summary affirmance is granted.

A TRUE COPY

FRANCES R. MATYSIK,

Deputy Clerk

By the Court,

Circuit Judge

Dated: Mar 29 1988

ade/cc: HG

EK

A-6 STATE OF NEW JERSEY CLERK'S OFFICE K 2139-86
Municipal Court of NEWARK 31 GREEN ST. K 2140-86
County of ESSEX 2nd Floor Docket No. K 2201-86
City Hall Annex Building
Newark, N.J. 07102

STATE
V.
Elaine Kenna
Defendant

ORDER
Payment of Fines
and Costs
Total
210.00

The defendant, SAME AS ABOVE, having been charged with a violation of 2c:12-1A, 2c: 29-2 on 9/1, 1986, and having been convicted and sentenced to pay a fine of \$150 and \$20+30 VC+ 10 VC FICK 2140 costs and appearing that the defendant presently is unable to pay the fine and costs in full.

It is Ordered that the defendant pay \$210.00 IN FULL commence 4/8/87 on account of said fine and costs.

Payment shall be made in cash to the clerk of the court or by mailing check or money order made payable to this court properly identified with the Docket number or Ticket number thereon as shown above

If subsequent to the entry of this Order, the defendant is unable to make payment as Ordered, the defendant shall immediately advise the court in writing, why payment cannot be made.

For failure to comply with this Order, a warrant may be issued for the arrest of the defendant charging the defendant with contempt of court (N.J.S.A. 2A:10-1c.).

Date: 3/20/87

Paul R. Daniele
Judge

Acknowledge receipt of a copy of and understand this Order:

Elaine Kenna
(Defendant)
Telephone No. (718)458-9406
D.O.B. 9/16/66
S.S. # 053-46-3958
White Blue

33-06 92 ST
Jackson Heights, NY
K 05509 80322 626000 66 NY
Driver License No. State

FINDINGS

MUNICIPAL COURT OF THE CITY OF NEWARK
K-2201-86, K-2139-86, K-2140-86 NOVEMBER 17, 1987

—flail our arms about as a result of these activities. I do not find that to be the more serious part of what occurred but more a continuing action within the sequence of events. These are my conclusions and findings of fact and I now must apply these findings to the charges before this Court.

First as to the charge made by Officer Schillizzie charging Elaine Kenna with resisting arrest. I do not believe that's the proper charge. I believe that the thrust of the actions should be contained in New Jersey Statute 29: — 2c: 29 1 and/or 3. Not from what I've heard resisting arrest. It's rather, obstructing with the administration of law and/or hindering apprehension. I do not find it within my reading of resisting arrest that this would be an appropriate charge. Defendant will, therefore, be found not guilty of Officer Schillizzie's charge of resisting arrest.

As to the other charge before the Court, simple assault and resisting arrest, I find that the probable cause existed in the non charge. What Officer Brown observed of the reactions relating to what Officer Schillizzie was doing and the fact that Elaine Kenna was upon him and the matter that he — she was, was certainly the probable cause to make the arrest. Without regard to a need to charge anything else, even though it didn't result in a proper charge, that during the course of these events she did commit the acts alleged, that is thrashing about. I don't find that there was any clear punching out at him. A flailing of the arms, sure. Touching and permissive illegal contact, sure. I find that it falls primarily within the purview of resisting Officer Brown's arrest.

And the allegations in K2140, simple assault, I will dismiss and merge into the resisting arrest, finding them to be substantially the same matters. Not guilty outright as to 2139, resisting arrest. Simple assault, complaint of Officer Brown, is merged into resisting arrest K2201. Defendant found guilty of one resulting charge K2201. Officer Brown's allegation of resisting arrest.

The Court has already commented that there were other charges. There was a likelihood of conviction as to those, but

they were not made and I can't deal with them.

I find myself in a difficult situation. I — I come to my own conclusions. I've heard it all. I haven't heard what the other Judge heard. Maybe I've heard more, maybe I've heard less. And maybe my perspective is a little bit different and I don't know how to allow for any of that.

My conclusions, I'm going to try and make as independent as I can. I'm going to try and not be guided by what has occurred in the past. Neither to the benefit nor to the detriment of this defendant.

My conclusion is — is I'm impressed, quite frankly, with the defendant, and frankly with the family. I almost didn't need Mr. Oliveras. I probably could have told you the background of this defendant without you putting her back on the stand to tell me what her background was. I perceived it more or less exactly what it would be. Not exactly as to the school and university or the background, but I think more or less close it did come through to me. I wasn't surprised by it.

But yet what I do find that what was a bother to me was her testimony as to what she did and why she did it and not recognizing that — accepting to a large extent what she said, it was wrong under those circumstances. Not that it wasn't a bad situation or a good situation or other people were bad, too, and they were doing wrong things. I accept that. But what you — what you did, in my opinion, frankly, didn't make it any better. And I think that's what this is all about.

MR. OLIVERAS: So it's 400 total, your Honor. She's already paid 190.

THE COURT: Why wasn't the rest of it paid? Is it to pay or something?

MR. OLIVERAS: There was only \$10 that was left; is that correct?

THE COURT: We just got — wait a second. Wait a second. Show him one more time. The total you're telling me is 390. Right?

MR. OLIVERAS: 200, 400, your Honor, total fine —

THE COURT: Total is 400?

MR. OLIVERAS: Yes.

THE COURT: 190 was paid.

MR. OLIVERAS: Was paid.

THE COURT: That's \$210 not paid.

MR. OLIVERAS: You paid everything already? She paid everything, your Honor. Do you have a receipt?

MS. KENNA: The first \$190 was the first time I came they refunded me my bail money and (indiscernible, microphone).

THE COURT: I see a separate receipt here for \$200—

MR. OLIVERAS: Do you have any receipts?

MS. KENNA: Not with me.

MR. OLIVERAS: Who has them? Tell your mother to come over. Yes.

THE COURT: You're right. It has been paid. \$390 has been paid. Anyway, 390. It's \$10 off, but I'm not going to argue with it.

MR. OLIVERAS: But that's the only thing that is left. Looking at the — transcript, there are \$400—okay. No, she'll get a number and call right back in five minutes. I'm sorry.

According to the transcript there are \$400 and fines and Court costs and penalties.

THE COURT: Okay. And according to her receipts now that I have reviewed it, it appears that \$390 was paid. It appears to have been a \$10 error, but that's not going to be the problem. I'll resolve that one way or the other.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

STATE OF NEW JERSEY, : CRIMINAL ACTION #87-299(SSB)

vs. :

ELAINE KENNA, : ORDER

Petitioner. :

This matter having been brought before the court on
Petitioner Elaine Kenna's Petition for Removal, pursuant to 28
U.S.C. & 1446(c) (1) ; and

The court having considered the submissions and oral argu-
ment of the parties; and

For the reasons stated in the court's opinion filed this date,
IT IS on this 16th day of November, 1987, hereby ORDERED
that Petitioner Elaine Kenna's Petition for Removal is DENIED.

No costs.

STANLEY S. BROTMAN
UNITED STATES DISTRICT JUDGE

A-9 NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

STATE OF NEW JERSEY, : CRIMINAL ACTION #87299(SSB)

VS. :

ELAINE KENNA, :
Petitioner. :

OPINION

APPEARANCES:

MS. ELAINE KENNA
33-06 92nd Street
Jackson Heights, NY 11372
Petitioner, Pro Se

PAUL LUCAS, ESQUIRE
Municipal Prosecutor
Municipal Court of the City of Newark
Municipal Court Building
31 Green Street
Newark, NJ 07102

WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER
BY: JAMES CRAWFORD ORR, ESQUIRE
One Gateway Center, Suite 1600
Newark, NJ 07102-5311

MICHAEL DRISCOLL, ESQUIRE
PORT AUTHORITY LAW DEPARTMENT
One World Trade Center
66th Floor
New York, NY 10048

BROTMAN, District Judge:

This matter comes before the court upon Petitioner's Petition for Removal of her criminal prosecution from the municipal court of the city of Newark, pursuant to 28 U.S.C. & 1446(C) (1). Petitioner Elaine Kenna has been charged with simple assault under N.J.S. 2c: 12-1(a) (1).

"The right to remove a case from a state to a federal court is purely statutory and therefore is entirely dependent on the will of Congress." Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d & 3721. Absent specific statutory authorization, this court is without jurisdiction to grant a petition for removal. No such authorization exists in the present case.

Congress has provided for removal of a criminal prosecution in three situations: a prosecution of a federal officer, 28 U.S.C. & 1442, a prosecution of a member of the armed forces, 28 U.S.C. & 1442a, and a prosecution which denies the defendant "the equal civil rights of citizens of the United States," 28 U.S.C. & 1443. The matter involving Ms. Kenna does not fall within any of these categories. Consequently, the present action is simply not removable to this court and the Petition for Removal must be denied.

An appropriate order will be entered.

STANLEY S. BROTMAN
UNITED STATES DISTRICT JUDGE

DATED: November 16, 1987.

NEWARK MUNICIPAL COURT
ESSEX COUNTY, NEW JERSEY

STATE OF NEW JERSEY,
PLAINTIFF,

DOCKET NOS. K-2201-86,
K-2139-86 AND K-2140-86

vs

ELAINE KENNA,
DEFENDANT

MA 70-87

TO THE JUDGES OF THE UNITED STATES DISTRICT
COURT
FOR THE DISTRICT OF NEW JERSEY

1. Petitioner is the Defendant in the above-entitled prosecution, and has been charged with violating N.J.S. 2C:12-1(a)(1), attempting to cause bodily injury to a police officer by punching him in the chest and has been charged with two counts each, of purposely preventing a law enforcement officer from effecting a lawful arrest.
2. The prosecution was commenced on September 1, 1986 by the filing of the three complaints in the Municipal Court of the State of New Jersey, in and for the County of Essex. Which prosecution was brought to trial on March 20, 1987, appealed on April 7, 1987 reversed on May 28, 1987 and remanded to the Municipal Court for a new trial.
3. Petitioner was arrested by the Port Authority Police on September 1, 1986 in the City of Newark, County of Essex, and her arrest was effected by and for the continuance of aiding, abetting and perpetuating customs and usages which have deep historical and psychological roots in the mores and attitudes which exist among Port Authority Police Officers within the City of Newark, County of Essex with respect to maintaining a fraternity among employees of the Port Authority of NY & NJ. Petitioner was arrested while standing amidst a group of persons employed at the airport. One of these airport employees to whom Petitioner had been speaking told her to talk a little better, and a Port Author-

ity employee told her it was in her best interest to leave the area. These two individuals along with a third airport employee had been blocking the automobile in which the Petitioner was attempting to leave the airport, holding her captive. After a number of threats by airport personnel, Petitioner was struck and pushed, called for the police to come to her aid, was ignored by two police officers who were in the area, and an acquaintance of hers came to her aid. The acquaintance pushed the individual who had hit her, and the police arrested the acquaintance. Many more police officers arrived in patrol cars, pushed, stepped on, and cursed at people in the area, used excessive unwarranted force against the acquaintance of Petitioner who had already been handcuffed and arrested without just cause.

Petitioner went to aid that acquaintance to prevent him from incurring more serious injury than he had already sustained, and was grabbed, pushed back and forth forcibly between officers, despite the fact she offered no resistance, and after a time was dragged to a police vehicle after being handcuffed and arrested without just cause. She was taken to Port Authority Building #10, subjected to a search in the presence of her acquaintance and a number of police officers. Afterward she was handcuffed to a chair where she would remain for five hours without being allowed to go to the toilet or receive medical attention. Throughout a sleepless night, she was subjected to abuse of Port Authority police officers who had removed their badges. At 5:00 A.M. Petitioner's father phoned to notify the police that bail had been raised. He had been told earlier by a police officer at the scene of the arrest that Petitioner could be released after four hours, but later was told by officers at Building #10 that Petitioner was not eligible for release until thirty six hours after her arrest. Accordingly, Petitioner's father not knowing at what time Petitioner could be released, asked to speak to her and was told that she was asleep, resting comfortably with a blanket and could not come to the phone. Conversely, at that time she was awake, in pain, and would have been out on bail within the hour had the truth been told. Instead Petitioner was not out on bail until approximately 1:00 P.M., eight hours later.

The Petitioner's acquaintance was arrested only after the arresting officer had spoken to an airport limousine driver who had been involved in a quarrel with that acquaintance, then spoke

to the acquaintance, heard Petitioner yell, followed the acquaintance as he went a short distance to aid the Petitioner and watched as the people said, no, not me, no, not me. Then seeing him push the person who had been identified as the one who had struck Petitioner, this officer went on top of him and arrested him. When many other police arrived in police cars and started without cause to attack the acquaintance, Petitioner went to his aid to protect him from more serious injury than he had already sustained. After the arrests, Petitioner's father spoke to people in the area, and a gentleman from Cincinnati told him he saw the police act improperly and was willing to so testify in court. After Petitioner's sister had taken down the name and address of this man, a Port Authority police officer came over to him and told him should he ever so testify in court, he would never again work at Newark Airport.

Petitioner's father went to Building #10 to notify those in charge that Petitioner had been arrested without just cause and was told no police were at the scene of the arrest until the acquaintance had pushed the airport employee who had hit and pushed petitioner. The officer in charge was immediately notified that his information was not correct and he was requested to call in the arresting officers to set the record straight. His reply was he had no power to do so. Next Petitioner's father stated to this officer that he wanted to file a complaint against the person who had instituted the incident by cursing repeatedly at Petitioner's family, and continued it by claiming that she had been hit. This particular complaint had been given to another officer at the scene of the incident before anyone had been pushed or arrested, and the complaint was at that time ignored. Once again it was ignored as Petitioner's father was told it could only be made at 31 Green Street. As a result an incident report was filed in which the Petitioner was charged with acts that are criminal, have no basis in fact and have been proven to be untrue. Yet this incident report is on file in the Newark Police Department for all to see.

4. By reason of the aforesaid, the transcript, the brief and affidavit annexed which show a continuation of a cause proved to be defective and lacking substance, yet being prosecuted, and also by reason of the Constitution of the State of New Jersey in respect to allowing cases prosecuted without indictment to be adjudicated without benefit of trial by jury upon agreement secured thereto by means of papers that are offered to Defendant for signature at a

time when he or she is under duress and not made aware that the right to trial by jury is being surrendered.

5. The Petitioner is denied and cannot enforce in the courts of the State of New Jersey rights under the Constitution and Laws of the United States providing for the equal rights of citizens of the United States and all persons within the jurisdiction thereof, in that among other things the State of New Jersey by statute, custom, usage and practice support and maintain a common law practice to deal with cases that are deemed to be misdemeanors that fosters false arrest, the issuance of complaints that are frivolous in nature and prosecuted after shown to be no longer viable.

6. This petition is being filed later than thirty days after arraignment but within thirty days of the date Petitioner has received notice that the State is proceeding with a new trial. It is respectfully submitted that the notice of those proceedings in view of what has gone before is a violation of Petitioner's civil rights.

7. Wherefore in view of these facts Petitioner prays that leave may be granted her to file this petition and an order so issued so the aforesaid criminal proceedings may be removed from the Municipal Court of the City of Newark, County of Essex, to the United States District Court for the District of New Jersey for trial and pray that said prosecution stand so removed as provided for in Title 28, United States Code Annotated Section 1446(c) and (d).

ELAINE KENNA
PETITIONER, PRO SE

33-06 92nd Street
Jackson Heights, NY 11372

Sworn to before me this
day of 1987

SUPERIOR COURT OF NEW JERSEY

Chambers of
YALE L. APTER
J.S.C

ESSEX COUNTY COURTS BLDG.
NEWARK, N.J 07102

May 28, 1987

Hon. Paul R. Daniele, JMC
Municipal Court of Newark
31 Green Street
Newark, New Jersey 07102

Dear Judge Daniele:

RE: State V. Elaine Kenna
MA 70-87

This Court has reviewed the file and transcript of the recorded proceedings in this matter.

Since the transcript is substantially unintelligible, (specifically at pages 94, 95, 101, 102, 114 through 123, 125 and 127) this Court cannot hear this appeal de novo on the record. As such, pursuant to R 3:23-8(a) and R 3:23-7, this case is being remanded to the Court from which the appeal was taken for a new trial.

Very truly yours,

Hon. Yale L. Apter

/cs-m

N.J.S.A. 2c: 1-13 a

No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absense of such proof, the innocence of the defendant is assumed.

N.J.S.A. 2c: 2- 2b(1)

PURPOSELY. A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

N.J.S.A. 2c: 29-1

A person commits a disorderly persons offense if he purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of intimidation, force, violence or physical interference or obstacle, or by means of any independently unlawful act. This section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

N.J.S.A. 2c: 29- 2

a. A person is guilty of a disorderly persons offense if he purposely prevents a law enforcement officer from effecting a lawful arrest, except that he is guilty of a crime of the fourth degree if he:

1. Uses or threatens to use physical force or violence

against the law enforcement officer or another, or

2. Uses any other means to create a substantial risk of causing physical injury to the public servant or another.

It is not a defense to a prosecution under this subsection that the law enforcement officer was acting unlawfully in making the arrest, provided the law enforcement officer announces his intention to arrest prior to the resistance.

b. Any person, while operating a motor vehicle on any street or highway in this State, who knowingly flees or attempts to elude any police or law enforcement officer after having received any signal from such officer to bring the vehicle to a full stop is a disorderly person.

N.J.S.A. 2c: 29- 3

a. A person commits an offense if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for an offense he:

(1) Harbors or conceals the other;

(2) Provides or aids in providing a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension or effecting escape;

(3) Suppresses, by way of concealment or destruction; any evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

(4) Warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;

(5) Prevents or obstructs, by means of force, intimidation or deception, any one from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

(6) Aids such person to protect or expeditiously profit from an advantage derived from such crime; or

(7) Volunteers false information to a law enforcement officer.

The offense is a crime of the third degree if the conduct

which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the fourth degree. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

b. A person commits an offense if, with purpose to hinder his own apprehension, prosecution, conviction or punishment, he:

(1) Suppresses, by way of concealment or destruction, any evidence of the crime or tampers with a document or other source of information, regardless of its admissibility in evidence, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(2) Prevents or obstructs by means of force or intimidation anyone from performing an act which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(3) Prevents or obstructs by means of force, intimidation or deception any witness or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(4) Volunteers false information to a law enforcement officer.

The offense is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

N.J.S.A. 2c:12-1(a)(1)

a. Simple Assault. A person is guilty of assault if he:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. A court may take judicial notice, whether requested or not.

(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter notices. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.

(g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed. (Jan. 2, 1975, P.L. 93-595, Section I, 88 Stat. 1930.)

(1) Judicial notice shall be taken, without request by a party, of the decisional, constitutional, and public statutory law and rules of court of this State and the decisional, constitutional, and public statutory law and rules of court of the United States, and of such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute.

(2) Judicial notice may be taken, without request by a party, of (a) the decisional, constitutional, and public statutory law and rules of court of every other state, territory and jurisdiction of the United States, private acts and resolutions of the Congress of the United States and of the legislature of this State, and of every other state, territory and jurisdiction of the United States, and duly enacted ordinances and duly published regulations and determinations of governmental subdivisions or agencies of the United States, of this State, and of every other state, territory and jurisdiction of the United States; (b) records of the court in which the action is pending and of any other court of this State or federal court sitting in or for this State; (c) the law of foreign countries; (d) such facts as are so generally known or of such common notoriety within the area pertinent to the event that they cannot reasonably be the subject of dispute; and (e) specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources of reasonably indisputable accuracy.

(3) Judicial notice shall be taken of each matter specified in paragraph (2) of this rule if a party requests it and (a) furnishes the judge sufficient information to enable him properly to comply with the request and (b) has given each adverse party notice thereof in the pleadings or at least 20 days before the trial. The judge, however, may permit such notice to be given at any time in the interest of justice. In the absence of an adequate basis for taking judicial notice of the law of any jurisdiction other than this State, and the United States, the judge shall apply the law of this State.

CONSTITUTIONAL PROVISIONSSIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

No person shall be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation.

FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of law; nor deny to any person within its jurisdiction the equal protection of the laws.

No. A-1064

Elaine Kenna,

Petitioner

v.

New Jersey

ORDER

the
petitioner,

UPON CONSIDERATION of the application of

petition

It is ORDERED that the time for filing a
for a writ of certiorari in the above-entitled case, be and
the same is hereby, extended to and including

August 2 , 1989

/s/ William J. Brennan, Jr.

Associate Justice of the Supreme
Court of the United States

Dated this 5th
day of July, 1989

A-17

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

ELAINE KENNA,

DEFENDANT-APPELLANT, Jackson Heights, NY 11372
(718) 458-9406

v.

STATE OF NEW JERSEY,

PLAINTIFF-RESPONDENT.

Elaine Kenna
33-06 92nd Street
On Appeal from the
Superior Court of New
Jersey, Appellate
Division A-15 88 T1

Sirs:

PLEASE TAKE NOTICE that Elaine Kenna hereby appeals to the Supreme Court of the United States from the judgement entered in the action of 15 February 1989 in favor of the State of New Jersey.

Appeal is taken to each and every part of the judgement pursuant to Federal Statute Section 2 254 as well as provisions of the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America.

Elaine Kenna
Pro Se

Dated: July 28, 1989

